Manitoba

Annual Report 1986 *

Office of the Commissioner
Law Enforcement Review Agency
Law Enforcement Review Board

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Winnipeg, Manitoba

Manitoba

The Attorney General

Winnipeg, Manitoba, CANADA
R3C 0V8

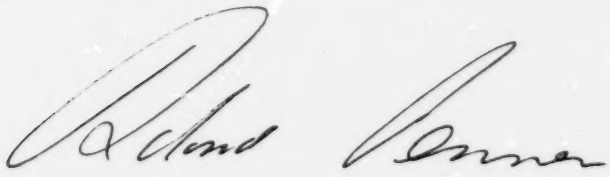
His Honour
The Honourable George Johnson
Lieutenant-Governor of Manitoba

Your Honour:

It is my pleasure to present the 1986 Annual Report of the Law Enforcement Review Agency. This report details the Commission's accomplishments and activities for the twelve-month period from January 1, 1986 to December 31, 1986.

I trust this meets with your approval.

Respectfully submitted,



Roland Penner, Q.C.
Attorney-General for
the Province of Manitoba

Manitoba

Attorney General

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
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The Honourable Roland Penner, Q.C.
Attorney-General
Province of Manitoba

Dear Mr. Minister:

I am pleased to submit my report for the period January 1, 1986 to December 31, 1986 in accordance with Section 45 of **The Law Enforcement Act.**

Yours sincerely,

Hans J. Schneider
Commissioner

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Law Enforcement Review Agency and Board Establishment

The full time staff of L.E.R.A. consists of:

Hans J. Schneider — Commissioner
Sharon L. Davis — Registrar and Secretary

The following personnel attached to the Law Enforcement Services Branch of the Attorney-General's Department provide investigative services to L.E.R.A. from time to time:

Del Hanson — Chief Investigator
Gerald E. Ferguson

Neville D. Shende, Q.C., Deputy Director of Legal Services, Attorney-General's Department, acts as legal counsel to the Commissioner.

The Law Enforcement Review Board included the following members in 1986:

Sheilla Leinburd, Presiding Officer
John Scurfield, Deputy Presiding Officer

Ms. Leinburd and Mr. Scurfield are in private practice in Winnipeg.

Lay Members:
Greg Selinger, Assistant Professor of Social Work, University of Manitoba

Francesco Valenzuela, Community Worker, former acting Chief of Criminal Investigation and police academy instructor, Santiago, Chile

Dolores Beaumont, Physical Education and French Immersion teacher, Ste. Anne, Manitoba

Clark Morrissette, Provincial Co-ordinator, Manitoba Metis Child and Family Support Program

Robert Florida, Head, Department of Religion, Brandon University

Former Peace Officers:
Edward Galliard, Superintendent, (Retired) R.C.M.P.

Ray Johnson, Inspector, (Retired) R.C.M.P.

Matthew Barry, Detective Sergeant, (Retired) Winnipeg Police Department

John Gongos, Assistant Commissioner, (Retired) R.C.M.P.

Leslie Isles, Superintendent, (Retired) Winnipeg Police Department.

Administrative support for the Board is provided by the Commissioner's office.

Overview

The Law Enforcement Review Act came into force on February 1, 1985. The first annual report covered eleven months of the calendar year. This second report covers a twelve-month period, a factor to be borne in mind when comparing statistical results between 1985 and 1986.

Staffing and funding levels in 1986 remained unchanged from 1985. L.E.R.A.'s operations followed the pattern established in the first year. Except in the case of a handful of complaints originating outside of Winnipeg and at the Manitoba Youth Centre, all complainants, respondents and witness officers were interviewed by the Commissioner. Investigators from the Law Enforcement Branch, Attorney-General's Department were responsible for locating and interviewing civilian witnesses and in some cases conducted follow up interviews with complainants. Respondent and witness officers from Winnipeg were interviewed in the presence of their legal counsel or an officer of their Association.

Whereas L.E.R.A.'s jurisdiction extends only to complaints about the conduct of members of municipal police forces, an attempt is made to provide assistance to anyone relating a problem by letter, telephone or in person. Where the matter does not involve a police concern, the complainant is referred to the proper authorities. In many instances assistance is provided by writing a letter or making a telephone call on the person's behalf. Where a complaint concerns the adequacy of police service but does not allege misconduct, the circumstances are reported to the Chief of Police in writing. A similar procedure is followed where a complaint is disqualified by the time limits imposed by the legislation. In 1986 a total of 179 citizens' representations were received, including 95 complaints accepted for investigation.

Except where a complaint is withdrawn, a detailed investigative report is completed in almost every case. This includes most of those which are dismissed by the Commissioner, and all the ones which are resolved informally or referred for a hearing of the Board. In 1986 a total of 70 detailed reports were completed.

Acknowledgements

As in the previous year, tribute must be paid to the exemplary co-operation received from the police. This applies to all police forces with which L.E.R.A. has been dealing but is particularly true of the Winnipeg Police Department which accounts for 90% of the L.E.R.A. workload. The co-operation with Chief Herb Stephen has continued to be friendly and positive, and the assistance of the Winnipeg Police Department Internal Investigation unit in providing the names of officers involved and relevant police reports has been outstanding.

Similarly the Winnipeg Police Association, through its officers and legal counsel, has continued to facilitate and support the L.E.R.A. process by assisting at interviews of involved officers. Finally, rank and file officers have for the most part freely discussed incidents involving them. This co-operation has been instrumental in the resolution of a large number of complaints.

The excellent investigative services provided by th staff of the Attorney-General's Law Enforcement Branch must also be acknowledged. Nothing is as important to the credibility of the L.E.R.A. process as the quality and timeliness of the investigations.

Workload (see Table 1)

A total of 95 new files were opened during the year, to which must be added the 26 carried over from 1985. A total of 94 case files were closed compared to 86 in 1985. Twenty-seven files were carried forward on December 31, 1986. The number of new cases has declined and the carryover is the same, an indication that the workload has remained manageable. There is a sharp increase however in the cases referred to a hearing of the board from three in 1985, to 10 in 1986. Some complaints referred to a board hearing are, however, resolved or withdrawn before a hearing actually takes place.

Law Enforcement Review Board (see Table 3)

The Board conducted six hearings during 1986 compared to one in 1985. Five of the complaints were referred to a hearing by the Commissioner and one was referred by order of the Manitoba Police Commission following an appeal of the Commissioner's decision not to take any further action. The Board dismissed this complaint as well as four of the five referred by the Commissioner. All of these complaints involved allegations of unnecessary violence and excessive force. The Board found in favour of the complainant in one complaint alleging oppressive conduct and being discourteous and uncivil. As at December 31, 1986 six additional complaints had been referred to the Board and are being scheduled for hearings in 1987.

Manitoba Police Commission

In accordance with **The Law Enforcement Review Act,** the Commissioner may take no further action on a complaint if he considers the allegations to be frivolous or vexatious, or if they are not within the scope of the disciplinary defaults defined in the **Act.** If dissatisfied with the Commissioner's decision, the complainant may appeal to the Manitoba Police Commission. In 1986, one complainant appealed to the Commission to have two officers re-instated as respondents after the Commissioner had ruled the allegations against them to be frivolous and vexatious. The Commission agreed with the complainant. The allegations against a third officer involved in the complaint had not been dismissed by the Commissioner. The Law Enforcement Review Board subsequently found in favour of all three respondent officers.

Out of the total of 43 complaints dismissed by the Commissioner in 1986, there was one further appeal to the Manitoba Police Commission. In that case too the Commission agreed with the complainant and the matter was held over for a hearing of the Law Enforcement Review Board in 1987.

Statistical Tables

Table 1. Totals for the year — 1986 figures are for a full year, compared to 11 months in 1985. With this taken into account, complaints against members of the Winnipeg Police Department decreased by 25% from 1985 to 1986.

Table 2. Type of Allegations — The number of allegations is greater than the number of complaints because some complaints involve multiple allegations.

TABLE 1
Totals for the Year

	1986	1985
Number of Citizens' representations received	179	167
Non-jurisdiction, not within scope of the **Act,** time expired	84	55
Complaints accepted for investigation	95	112
Origin		
Brandon	8	6
Winnipeg	85	105
Other	2	1
Files Closed — Disposition		
No further action subsection 13(1)	43	33
Withdrawn by Complainant	18	25
Admission by respondent officer	1	0
Informal Resolution	22	25
Referred to a L.E.R.A. Board hearing on the merits	10	3
Total	**94**	**86**
Files open at December 31st	**27**	**26**

TABLE 2
Type of Allegations

	1986
Using oppressive or abusive conduct or language	45
Using unnecessary violence or excessive force	43
Being discourteous or uncivil	29
Discrimination	1
Arrest without reasonable or probable grounds	7
Damaging property or failing to report the damage	3
Making a false statement	2
Without authorization, assisting in a civil matter	3
Totals	**133**

TABLE 3
Board Referrals and Hearings

	1986	1985
Carried forward from 1985	2	—
Referrals	10	3
Hearings	6	1
Carried forward to next year	6	2

TABLE 4
Complaints Received by Month

	1986	1985
January	3	
February	2	10
March	8	13
April	9	8
May	13	12
June	19	10
July	5	15
August	12	9
September	12	13
October	6	11
November	2	6
December	4	5
Totals	**95**	**112**

TABLE 7
Day of the Week of Incident

	1986	1985
Monday	7	16
Tuesday	11	21
Wednesday	18	18
Thursday	13	14
Friday	11	10
Saturday	21	10
Sunday	14	23
Total	**95**	**112**

TABLE 5
Complaints by Age & Sex of Complainants or Affected Persons

	Male		Female		Total	
	1986	1985	1986	1985	1986	1985
Under 18 years	3	15	1	0	4	15
18-30 years	35	37	10	12	45	49
Over 30 years	25	32	21	6	46	38
Unknown		10				10
Totals	**63**	**94**	**32**	**18**	**95**	**112**

TABLE 6
Time of Day of Incident

	1986	1985
8:00 a.m. - 8:00 p.m. (day)	41	41
8:00 p.m. - 8:00 a.m. (night)	52	68
Unknown	2	3
Total	**95**	**112**

TABLE 8
Location of Incident

	1986	1985
Street	37	58
Private Home	25	20
Public Building/Place or Police Station	31	29
Police vehicle	—	7
Other (unknown)	2	4
Total	**95**	**118**

TABLE 9
Legal Involvement of Complainant

	1986	1985
No charges	36	47
Traffic violation	19	24
Property offences	11	11
Intoxicated Person's Detention Act	2	8
Causing Disturbance	4	6
Assault peace officer/resist arrest	12	6
Impaired driving	4	3
Offences against another person	2	3
Other	16	19
Total	**106**	**127**

Final Word

This is my final Annual Report as Law Enforcement Review Commissioner. This year I will retire after 29 years in Government service, the last three of which have been devoted to the inception and operation of The Law Enforcement Review Agency.

L.E.R.A. staff consists of two full-time people, Commissioner and Registrar/Secretary. Unfortunately for an orderly succession in the office of Commissioner, the Registrar/Secretary is also leaving. This leaves no continuing organization to provide experienced support to the next Commissioner.

In this type of program, the Commissioner necessarily imprints his personal style on the operation. My successor will have an opportunity to introduce new methods and improvements will ensue. At the outset, however, there should ideally be some staff continuity to ensure there is as little disruption as possible.

An internal evaluation of L.E.R.A. operations is underway by the Research and Planning Branch of the Attorney-General's Department which may recommend modifications to L.E.R.A. Meanwhile, I would like to draw attention to the following aspects of the L.E.R.A. operation which I feel ought to be placed on the record to assist a new Commissioner:

1. Staffing:

I fear that the L.E.R.A. Program will lose credibility and will atrophy unless the Commissioner can be freed of the routine inherent in a two-person office. The Commissioner needs more time for consultations with the police, legal and municipal authorities. The Commissioner should also be involved to a greater degree in public educational activities. I recommend the addition of a full-time, senior person to conduct investigations, and to share the workload with the Commissioner. It is also important to have someone available for case consultation on a continuing basis.

2. Legislation:

As in the case of any new program established by an Act of the Legislative Assembly, certain deficiencies have appeared in the first two years of operation. Proposals for amendments to **The Law Enforcement Review Act** have been submitted to the Minister. The most crucial of these deal with the credibility and effectiveness of hearings before the Law Enforcement Review Board. Although only a small fraction of complaints require a board hearing, public awareness of the L.E.R.A. process is concentrated on them, and eventually the program will stand or fall on how they are perceived.

3. Other Jurisdictions:

Interest in civilian oversight of law enforcement is increasing worldwide. We have been consulted by concerned provincial authorities from British Columbia, Ontario, and New Brunswick, as well as the R.C.M.P. In the fall of 1985, L.E.R.A. was a charter member in a new organization, The International Association for Civilian Oversight of Law Enforcement (IACOLE), founded at a conference in Toronto. The organization includes membership from the U.S.A., Europe, Africa, and Australia.

In 1986 the L.E.R.A. Commissioner was invited to be one of the speakers at the 2nd Annual IACOLE Conference in Miami, Florida. Unfortunately, the invitation was declined because the required Ministerial approval for out-of-Province travel was not received. Of 19 Canadians attending the conference, Winnipeg City Councillor, Terry Wachniak, was the only Manitoban. This should not happen again. I strongly recommend continued active participation by L.E.R.A. in IACOLE on behalf of Manitoba, including attendance at the Annual Conference. We are a pioneering venture conducted by a small and isolated agency. It is essential that we share information and insights with similar agencies elsewhere.

Elsewhere in this report we have acknowledged the cooperation received from various agencies and individuals. I would also like to say a word about the rank and file members, particularly of the Winnipeg Police Department. With few exceptions, they have responded forthrightly to allegations contained in complaints. They are an outstanding group of men and women who bring impressive intelligence and sense of purpose to their demanding jobs. They may tend to take themselves rather seriously, but law enforcement is not a frivolous pursuit. In their work they see people at their worst; they cannot help but develop a somewhat cynical view of society. They are preminent authority figures in an era when authority at all levels is challenged and resisted. They frequently come into conflict with groups and individuals who feel compelled to assert themselves because they feel repressed and discriminated against by society as a whole.

Some police officers resent the diminished respect for authority and increased defiance they are faced with. Others cope with it by developing their understanding of human nature and perfecting their communication skills. That, together with a high standard of conduct and the requisite skills and personal characteristics, provides the degree of professionalism that is called for in police work in today's society. The ultimate and attainable goal should be to raise policing to the dignity and status of a true profession. That will offset any loss of police prestige due to the public's diminishing subservience to authority.

L.E.R.A. can help in this process by interpreting and reflecting public perceptions to the police, and representing the case for the police to the public. Even incidents which do not lead to a formal hearing, where the complaint is either rejected or informally resolved, may contain valuable lessons for the police. On that premise, we have endeavoured to provide adequate documentation and analysis in almost every case. It is my hope that in one form or another this practice may continue in the future.

There are risks to be avoided. L.E.R.A. must never become, or even appear to be, a means of obstructing the legitimate endeavours of the police in law enforcement and crime prevention. There will always be complaints against the police, from persons charged with an offence seeking to discredit the arresting officer, and from those whose volatile disposition or state of inebriation induces them to engage in some form of quixotic provocation.

Many complainants are persons who are, or at least believe themselves to be, not guilty of any wrongdoing. Compelled by their sense of outraged innocence, they are quick to regard police action as abusive and oppressive, even if everything the officer does is justified and technically correct. L.E.R.A. has a role in promoting a greater degree of tolerance and understanding for police actions in the prevention and detection of crime. On the other hand, people would be more tolerant if the police would sometimes take time to explain their actions, or apologize for a mistake or an imposition.

A substantial number of complaints are dealt with by simply explaining the opposing parties to each other and to define the common ground between them. This aspect of L.E.R.A. comes closest to the ideal of improved police community relations. It is worth a great deal of effort, both by L.E.R.A. and the police themselves.

Above all, despite the confrontational nature of much of our association, I wish Manitoba municipal police well. I have learned to appreciate their earnest desire both to do a good job and to be recognized as doing so by their communities.

Hans J. Schneider
Commissioner

Manitoba

The Law Enforcement Review Act **Form 1**

COMPLAINT

DATE and TIME REPORTED

Day | Month | Year | Time

Nº 1

COMPLAINANT

Surname	First Name	Initial(s)	Date of Birth	Sex	Marital Status

Home Address	Postal Code	Telephone No – Residence	Business Address	Postal Code	Telephone No – Business

Date of Incident	Time	Location

DETAILS OF INCIDENT (must be typewritten or printed)

Use reverse side if more space required

Details of Injuries Sustained	Photographs Taken NO ☐ YES ☐

Attending Physician Name	Address	Telephone No	Hospital Attended	Date Attended

TNESS(ES) Name	Address	Telephone No

cted Person (if different than complainant) Name	Address	Telephone No

OFFICER(S) INVOLVED	Form 2 given to complainant	If no state reason
Name and Rank / Number	☐ Yes ☐ No	

COMPLAINT RECEIVED BY	I CERTIFY THAT THE INFORMATION I HAVE GIVEN HEREIN IS TRUE
	Signature of Complainant

DISTRIBUTION: **Quadruplicate**
L.E.R.A. Commissioner (white)
Complainant (canary)
Police Chief (pink)
Respondent Officer (goldenrod)

MG 12259

OVER

Manitoba

Attorney General

Law Enforcement
Review Agency

12th Floor
Woodsworth Building
405 Broadway
Winnipeg, Manitoba, CANADA
R3C 3L6

Complaint Procedures

TO THE COMPLAINANT:

This statement sets out the procedures that will be followed in dealing with your complaint and your rights under **The Law Enforcement Review Act.**

Who May Make a Complaint:

1. Any person who feels aggrieved by the action or attitude of a police officer may make a complaint.
2. A complaint may also be made by another person on behalf of the person affected by the incident complained about. This would most often be the case if the affected person has died, is a minor or is temporarily or permanently incapacitated from acting on his or her own behalf. Unless the affected person is under 18 years of age or is not competent to give consent, the complaint will only be proceeded with if the affected person consents in writing.

How to Make Your Complaint:

3. Your initial complaint may be made verbally or in writing to any member or the chief of the police department involved or directly to the office of the Law Enforcement Review Agency (L.E.R.A.) Commissioner at the 12th Floor, 405 Broadway Avenue (Woodsworth Building), Winnipeg, Manitoba R3C 3L6, telephone 945-8667.
4. You will be asked to complete a complaint form (Form 1). You may request the assistance of the Commmissioner's office or of a member of the police department to assist you in completing this form. Before it can be dealt with by the Commissioner, a complaint must be submitted in writing and signed by the complainant.

   Note: If a complaint against an R.C.M.P. officer is made to the Commissioner, it will be forwarded to the Commissioner of the Royal Canadian Mounted Police. Procedures under **The Law Enforcement Review Act** do not apply to such complaints. They are dealt with under **The R.C.M.P. Act.**

Time Limits:

5. Ordinarily complaints must be submitted within 30 days of the incident leading to the complaint. Under special circumstances, where the complainant has no reasonable opportunity to meet this deadline, the Commissioner may extend the time, but to not more than six months from the date of the incident. Such special circumstances might include the complainant's absence in some remote location or out of the province or sickness or injury.
6. Where a complainant faces criminal charges connected with the incident which leads to the complaint, the Commissioner may extend the time limit to not more than 30 days after the final disposition of the charges or one year from the date of the incident, whichever is the sooner.

Who Sees Your Complaint:

7. No matter where your complaint is recorded, a copy will be sent to the L.E.R.A. Commissioner and the chief of police of the police department concerned. The police officer complained against will also receive a copy as soon as is practicable.

Investigation and Reports:

8. An investigator from the Commissioner's office may interview you, the police officer concerned and any other persons who can provide relevant information on your complaint.
9. If you prefer to have your complaint dealt with by an internal investigation by the police force concerned, you may make a written request to this effect to the Commissioner who may then decide to suspend his own investigation. He will however receive a report of the internal investigation.

Appeal to Police Commission:

10. On reviewing the results of the investigations, the Commissioner may decide that the complaint was not justified, or that the matter complained of does not constitute a disciplinary default as defined in the Act. In that case you will be informed that no further action will be taken. If you are not satisfied with the reasons for this decision, you may apply to the Manitoba Police Commission to review the matter.

11. The Commission may sustain the decision of the Commissioner or order that the complaint be proceeded with. The Commission's ruling is final.

Informal Resolution of Complaint:

12. After the Commissioner has reviewed the circumstances of the complaint, he will consult with you to determine whether the complaint can be resolved informally. An important purpose of **The Law Enforcement Review Act** is to maintain harmony and cooperation between police and the community. Very often this purpose is best served by mutual explanations and reconciliations.

13. Both you and the police officer concerned must agree on the way in which the complaint is to be resolved, otherwise an informal resolution cannot take place.

14. As an alternative to informal resolution, the police officer may admit to a disciplinary default and accept a penalty prescribed by the Commissioner.

Law Enforcement Review Board:

15. The Board established under the Act holds a hearing to review the complaint under the following circumstances:

    (i) Where the Manitoba Police Commission, on application of the complainant, has overruled the decision of the Commissioner not to take further action (see Item 11).

    (ii) Where the police officer complained against does not admit to being at fault.

16. You will be notified at least 14 days in advance of the date set by the Board for its hearing.

17. You may present your own case before the Board or you may be represented by counsel.

18. Board hearings are public except where the Board decides that they should be held in private in the interests of justice.

19. All testimony at a Board hearing is made under oath.

20. The Board is required to dismiss a complaint that cannot be proven beyond a reasonable doubt. You will be informed of the Board's decision as soon as practicable after the hearing, and if you request it, the reasons for the Board's decision.

Appeal:

21. You may appeal a decision of the Board to the Court of Queen's Bench but only on a question of the Board's jurisdiction or a question of law.

Legal Counsel:

22. You may be represented by counsel at any stage of the proceedings, including hearings by the Commissioner or the Board.

23. A Legal Aid lawyer may be provided to complainants who are financially eligible for Legal Aid. In special cases, the Commissioner may recommend provision of legal counsel at public expense where a complainant is not eligible for Legal Aid but the cost of a lawyer would represent a substantial financial hardship.

Reports:

24. During the course of processing your complaint, you will receive progress reports at least every month if proceedings take longer than 30 days and you will be informed of the final disposition of your complaint.

Further Questions:

25. If you require additional information or explanations, please apply to the Commissioner, Law Enforcement Review Agency (L.E.R.A.), 12th Floor, 405 Broadway Avenue, Winnipeg, Manitoba R3C 3L6, or telephone 945-8667, Toll Free: 1-800-282-8069.

Appendix II
The Law Enforcement Review Act and Regulations

Language Certificate:
I hereby certify that this Bill was printed in the English language only when copies were first distributed to the members of the House.
Dated this 29th day of August, 1983.

W. H. REMNANT, Clerk of the House.

CHAPTER L75

THE LAW ENFORCEMENT REVIEW ACT

(Assented to August 18, 1983)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"board" means the Law Enforcement Review Board appointed under this Act;

"Chief of Police" means the executive head of a municipal police department by whatever rank or title he may be designated, and includes any member acting as the executive head of a municipal police department;

"Commissioner" means the Commissioner appointed under this Act;

"complainant" means a person who has filed a complaint under this Act;

"complaint" means a complaint made by a person in respect of a disciplinary default allegedly committed by a member of a police department;

"disciplinary default" means any act or omission referred to in section 29;

"member" or "member of a police department" means any person employed in a municipal police department having the powers of a peace officer or employed as a peace officer in any municipality in the Province of Manitoba;

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;

"respondent" means a member against whom a complaint has been made under this Act;

"service record" means a service record established under section 32.

S.M. 1982-83-84, c. 21, s. 1.

Appointment of Commissioner.

2(1) The Lieutenant Governor in Council shall appoint a Commissioner.

Powers, duties and functions.

2(2) The Commissioner has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Full-time appointment.

2(3) The Commissioner shall devote his full time to his responsibilities under this Act, and shall not concurrently hold any full-time or part-time position of any kind.

S.M. 1982-83-84, c. 21, s. 2.

Commissioner is officer of Manitoba Police Commission.

3 The Commissioner is an officer of the Manitoba Police Commission.

S.M. 1982-83-84, c. 21, s. 3.

Law Enforcement Review Board established.

4(1) There is hereby established a board to be known as the "Law Enforcement Review Board" comprised of not less than 7 persons, including a presiding officer and deputy presiding officer, appointed by the Lieutenant Governor in Council for such term as designated by the Lieutenant Governor in Council.

Powers, duties and functions.

4(2) The board has such powers and shall carry out such duties and functions as conferred or imposed under this Act or as may be required for purposes of this Act by the Lieutenant Governor in Council.

Presiding officers to be lawyers.

4(3) No person shall be appointed presiding officer or deputy presiding officer of the board unless he is a member in good standing of the Law Society of Manitoba with at least 5 years' experience at the Bar.

Board to include peace officers.

4(4) The membership of the board shall at all times include at least 2 persons who are or were peace officers.

Quorum.

4(5) Three board members constitute a quorum for purposes of conducting board business.

Panel chosen on sequential basis.

4(6) On or before April 1 of every year, the presiding officer of the board shall prepare a list naming all the members of the board, and for purposes of holding hearings or conducting other board business, the members shall serve in sequence as their names appear on the list; but if by reason of subsection 24(2) a board member is ineligible to sit on a hearing, the next member in sequence shall be selected to sit on the hearing.

S.M. 1982-83-84, c. 21, s. 4.

Assistance of experts.

5 The minister may authorize the Commissioner at the expense of the government to retain the services of counsel and other experts as the Commissioner deems fit.

S.M. 1982-83-84, c. 21, s. 5.

Complaint concerning police conduct.

6(1) Every person who feels aggrieved by a disciplinary default allegedly committed by any member of a police department may file a complaint under this Act.

Third party complaint.

6(2) The complaint may be filed notwithstanding that the alleged disciplinary default has affected some person other than the complainant, but has not affected the complainant.

Procedure for filing complaint.

6(3) Every complaint shall be in writing signed by the complainant setting out the particulars of the complaint, and shall be submitted to

(a) the Commissioner; or

(b) the Chief of Police of the department involved in the complaint; or

(c) any member of the department involved in the complaint;

not later than 30 days after the date of the alleged disciplinary default.

Verbal complaint.

6(4) Every member who receives a verbal complaint concerning conduct which may constitute a disciplinary default shall forthwith inform the person making the verbal complaint that a complaint under this Act must be made in writing and shall forthwith inform the person of the relevant time limits set out in this section.

Where complainant unable to write.

6(5) Where the complainant is unable to reduce the complaint into writing, the person to whom the complaint is made shall

(a) take down the complaint in writing;

(b) read the complaint back to the complainant; and

(c) have the complainant sign the complaint.

Commissioner may extend time.

6(6) Where the complainant has no reasonable opportunity to file a complaint within the time period set out in subsection (3), the Commissioner may extend the time for filing the complaint to a date not later than 6 months after the date of the alleged disciplinary default.

Where complainant faces criminal charges.

6(7) Where an alleged disciplinary default occurs in the course of an investigation, arrest or other action by a member which results in a criminal charge against the complainant, the Commissioner may extend the time for filing the complaint to a date not later than 1 year after the date of the alleged disciplinary default or 30 days after the final disposition of the criminal charge, whichever is the sooner.

S.M. 1982-83-84, c. 21, s. 6.

Notification of complaint.

7(1) Where a complaint is made

(a) to the Commissioner, the Commissioner shall forthwith forward a copy of the complaint to the Chief of Police of the department involved in the complaint;

(b) to a member of the department involved in the complaint, the member shall forthwith forward a copy of the complaint to the Chief of Police of that department who shall forward a copy to the Commissioner;

(c) to the Chief of Police of the department involved in the complaint, the Chief of Police shall forthwith forward a copy of the complaint to the Commissioner;

together with any other statements or documents submitted by the complainant.

Copy of complaint to respondent.

7(2) Upon receiving a complaint, the Commissioner shall, as soon as it is practicable, provide the respondent with a copy of the complaint.

S.M. 1982-83-84, c. 21, s. 7.

No complaint by member.

8 Notwithstanding section 6, no member shall file a complaint under this Act in respect of any act or omission which affects the member while he is executing his duties.

S.M. 1982-83-84, c. 21, s. 8.

Commissioner to notify affected person.

9(1) Where a complaint has been filed in the circumstances referred to in subsection 6(2), the Commissioner, forthwith after receiving the complaint, shall in writing notify the person affected by the alleged disciplinary default that a complaint has been filed under this Act.

Affected person must consent.

9(2) Where the person affected by the alleged disciplinary default does not, within 14 days of receiving the notification referred to in subsection (1) or within such further time as the Commissioner may allow, file with the Commissioner a written consent to the processing of the complaint under this Act, the Commissioner shall take no further action on the complaint.

Where no consent required.

9(3) Subsection (2) does not apply where the person affected by the alleged disciplinary default is an infant or is not competent to give consent.

S.M. 1982-83-84, c. 21, s. 9.

Further particulars.

10 On his own behalf or at the request of the respondent, the Commissioner may require the complainant to provide further particulars of the conduct complained of and the Commissioner shall forward a copy of the further particulars to the respondent and to the respondent's Chief of Police.

S.M. 1982-83-84, c. 21, s. 10.

Complaint against Chief of Police.

11(1) Any person wishing to make a complaint against a Chief of Police shall file the complaint with the Commissioner; and this Act, except subsection 12(8), applies with necessary modifications thereto.

No complaint in disciplinary matter.

11(2) Notwithstanding subsection (1), no member shall file a complaint under this Act in respect of the exercise by the Chief of Police of his power to discipline any member.

S.M. 1982-83-84, c. 21, s. 11.

Investigation by Commissioner.

12(1) Upon receiving a complaint, the Commissioner shall forthwith cause the complaint to be investigated and for this purpose, the Commissioner has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Relevant materials forwarded to Commissioner.

12(2) At the request of the Commissioner, the Chief of Police of the department involved in the complaint shall forthwith forward to the Commissioner copies of all documents, statements, and other materials relevant to the complaint which are in the possession, or under the control, of the police department involved in the complaint.

Materials required for criminal investigation.

12(3) Where any of the materials referred to in subsection (2) are required for the purpose of a criminal investigation, the Chief of Police may request, and the Commissioner may grant, an extension of time for forwarding copies of such materials.

Questions of privilege.

12(4) Where the Chief of Police declines to forward copies of any of the materials referred to in subsection (2) on the ground that the materials are privileged, the Commissioner may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

Order to search and seize.

12(5) Where a justice is satisfied by information upon oath of the Commissioner, or a person employed by the Commissioner, that there is reasonable ground to believe that there is in a building, receptacle or place

(a) anything upon or in respect of which a disciplinary default under this Act has been or is suspected to have been committed; or

(b) anything which there is reasonable ground to believe will afford evidence of the commission of a disciplinary default under this Act;

the justice may issue a warrant authorizing a person named therein or the Commissioner to search the building, receptacle or place for any such thing, and to seize the thing and bring it before the Commissioner for use by the Commissioner in investigating a complaint under this Act.

Utilizing necessary resources and persons.

12(6) Subject to subsection (7), the Commissioner may utilize any resources and employ any persons the Commissioner deems necessary for the prompt and thorough investigation of a complaint.

No investigation by department involved in complaint.

12(7) Except as otherwise provided in this section, the Commissioner shall not employ for purposes of investigation any person who is, or at the time of the occurrence complained of was, a member of the police department involved in the complaint.

Internal investigation.

12(8) At the written request of the complainant, the Commissioner may refer the complaint to the respondent's Chief of Police for internal investigation.

Criminal investigation.

12(9) Where the respondent's Chief of Police informs the Commissioner that the respondent's conduct is being or will be investigated by the internal investigation unit of the department for the possible laying of criminal charges against the respondent, the Commissioner may request the Chief of Police to forward the results of the investigation to the Commissioner for purposes of this Act.

Report by Chief of Police.

12(10) When the internal investigation referred to in subsection (8) or (9) has been completed, the Chief of Police shall report the results of the investigation to the Commissioner, and the Commissioner shall thereafter deal with the complaint as provided in this Act.

S.M. 1982-83-84, c. 21, s. 12.

Commissioner not to act on certain complaints.

13(1) Where the Commissioner is satisfied that the subject matter of the complaint

(a) is frivolous or vexatious; or

(b) does not fall within the scope of section 29;

the Commissioner shall decline to take further action on the complaint and shall in writing inform the complainant, the respondent, and the respondent's Chief of Police of his reasons for declining to take further action.

Application to Manitoba Police Commission.

13(2) Where under subsection (1) the Commissioner has declined to take further action on the complaint, the complainant may apply to the Manitoba Police Commission for an order requiring the Commissioner to refer the complaint to the board for a hearing.

Police commission to hear parties.

13(3) At the request of either party, the Manitoba Police Commission shall hear submissions from the parties in support of or in opposition to an application brought under subsection (2).

Burden of proof on complainant.

13(4) Where an application is brought under subsection (2), the burden of proof is on the complainant to show that the Commissioner erred in declining to take further action on the complaint.

Decision of Manitoba Police Commission final.

13(5) The decision of the Manitoba Police Commission on an application under subsection (2) is final and shall not be subject to appeal or review of any kind.

S.M. 1982-83-84, c. 21, s. 13.

Evidence of internal disciplinary matter.

14 Where under subsection 9(2) or section 13 the Commissioner takes no further action on a complaint, but the investigation has revealed evidence of matters which may be subject to internal police discipline, the Commissioner may forward all relevant material to the appropriate disciplinary authority in the police department for the possible commencement of internal disciplinary procedures.

S.M. 1982-83-84, c. 21, s. 14.

Informal resolution of complaint.

15(1) Where the investigation has been completed, the Commissioner shall consult with the complainant, the respondent and the respondent's Chief of Police for the purpose of resolving the complaint informally.

Agreement between complainant and respondent.

15(2) Where the complainant and the respondent concur, but the respondent's Chief of Police does not concur, with a proposal to resolve the complaint informally, the Commissioner may nevertheless resolve the complaint informally in accordance with the proposal.

No record of informal resolution.

15(3) Where the complaint is resolved informally, no penalty shall be imposed against the respondent and no record of either the complaint or the informal resolution thereof shall be entered on the service record of the respondent.

S.M. 1982-83-84, c. 21, s. 15.

Admission of disciplinary default.

16(1) Where the respondent admits having committed a disciplinary default, the Commissioner shall recommend one or more of the penalties set out in section 30.

Appropriate penalty determined.

16(2) Before recommending one or more of the penalties set out in section 30, the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent.

Matters relevant to appropriate penalty.

16(3) The purpose of the Commissioner's consultation with the respondent's Chief of Police shall be to determine the opinion of the Chief of Police with respect to

(a) the severity of the alleged disciplinary default; and

(b) the contents of the respondent's service record;

and the Commissioner's recommendation concerning an appropriate penalty shall be based solely upon these two factors.

Imposition of penalty.

16(4) If the respondent concurs with the recommendation of the Commissioner, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

Referral to board.

16(5) If the respondent does not concur with the recommendation of the Commissioner, the Commissioner shall refer the complaint to the board for a hearing on the question of the penalty to be imposed against the respondent.

Statement of facts and recommended penalty.

16(6) Where the Commissioner refers a complaint to the board under subsection (5), the Commissioner shall prepare and forward to the board a written statement of

(a) the facts which constitute the subject matter of the complaint; and

(b) the penalty or penalties recommended by the Commissioner under subsection (1);

and the Commissioner shall provide the respondent with a copy of the statement.

S.M. 1982-83-84, c. 21, s. 16.

Referral to board on merits.

17(1) Where

(a) the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing; or

(b) disposition of a complaint within the terms of section 15 or section 16 is not possible;

the Commissioner shall refer the complaint to the board for a hearing on the merits of the complaint.

Notice of alleged disciplinary default.

17(2) Where the Commissioner refers a complaint to the board under subsection (1), the Commissioner shall serve the respondent with notice of each alleged disciplinary default in the form prescribed by the regulations, and the Commissioner shall forward a copy of the notice of each alleged disciplinary default to the board.

Statement recommending appropriate penalty.

17(3) Upon referring a complaint to the board under subsection (1), the Commissioner shall prepare a written statement recommending one or more of the penalties set out in section 30 to be the penalty which in the Commissioner's opinion the board should impose for each alleged disciplinary default, and the Commissioner shall provide the respondent with a copy of the statement.

Forwarding of statement to board.

17(4) The Commissioner shall not forward the statement referred to in subsection (3) to the board unless, subsequent to determining the merits of the complaint, the board requests the statement for the purposes of clause 28(2)(b).

Appropriate penalty determined.

17(5) Before preparing the statement referred to in subsection (3), the Commissioner shall consult with the respondent's Chief of Police and shall examine the service record of the respondent; and subsection 16(3) applies to the consultation and to the Commissioner's recommendation.

Recommendation by Manitoba Police Commission.

17(6) Where the Manitoba Police Commission has ordered the Commissioner to refer a complaint to the board for a hearing, the Manitoba Police Commission shall determine an appropriate penalty for each alleged disciplinary default in accordance with the procedures set out in this section, and the Commissioner shall observe the requirements of subsection (3) as if the Commissioner had determined the appropriate penalty.

S.M. 1982-83-84, c. 21, s. 17.

Access to documents and statements.

18(1) Subject to subsection (2), all parties to a board hearing and their counsel, but no other persons, are entitled to examine any relevant documents or statements in the possession, or under the control, of the Commissioner.

Questions of privilege.

18(2) Where the Commissioner believes that a question of privilege arises in respect of any documents or statements in his possession or under his control, he may make summary application to a judge of the Court of Queen's Bench for a ruling on the question of privilege.

S.M. 1982-83-84, c. 21, s. 18.

Respondent entitled to remain silent.

19 The respondent is not bound to make any statement to the Commissioner, or to answer any question asked by the Commissioner or anyone employed by the Commissioner.

S.M. 1982-83-84, c. 21, s. 19.

Respondent's statements inadmissible.

20(1) No statement made by the respondent to the Commissioner or to anyone employed by the Commissioner, except a statement made for purposes of section 16, is admissible at any hearing of the board without the consent of the respondent.

Statement for purposes of resolution privileged.

20(2) Any statement made by either the complainant or the respondent for purposes of resolving the complaint under section 15 is privileged for all purposes, including an action arising out of the same facts as the complaint.

S.M. 1982-83-84, c. 21, s. 20.

Right to counsel.

21 Both the complainant and the respondent have a right to counsel at any stage of any proceedings under this Act, including review by the Commissioner.

S.M. 1982-83-84, c. 21, s. 21.

Contributing causes.

22 Where the Commissioner identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the Commissioner may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.

S.M. 1982-83-84, c. 21, s. 22.

Fixing and notification of date of hearing.

23(1) Where the Commissioner has referred a complaint to the board under this Act, the board shall fix a date, time, and place for a hearing and shall notify

(a) the complainant;

(b) the respondent;

(c) the respondent's Chief of Police; and

(d) the Commissioner;

of the date, time, and place at least 14 days prior to the hearing.

Parties to hearing.

23(2) The complainant and the respondent are parties to any board hearing, but the board may add such other parties, and may receive submissions from such other persons, as it sees fit.

S.M. 1982-83-84, c. 21, s. 23.

Who presides at hearing.

24(1) The presiding officer or deputy presiding officer shall preside at every board hearing.

Member of same department not to sit on hearing.

24(2) No board member who is or has been a member of a police department shall sit on any hearing involving a complaint against a member of that police department.

Powers of board under Evidence Act.

24(3) For the purpose of holding a hearing under this Act, the board has all the powers of Commissioners under Part V of The Manitoba Evidence Act.

Summary conviction procedures to apply.

24(4) Except as otherwise provided in this Act or by regulation, the rules of procedure in summary conviction proceedings apply to all board hearings.

Evidence.

24(5) The board may receive and accept such evidence and information on oath, affirmation, affidavit, or otherwise as in its discretion it may deem fit and proper, whether admissible in evidence in a court of law or not; and the evidence and information shall be recorded.

Right to participate.

24(6) At every board hearing, the parties may be present, may call witnesses, may cross-examine witnesses in respect of viva voce or affidavit evidence, and may be represented by counsel.

Presentation of case in support of complaint.

24(7) The case in support of the complaint may be presented by

(a) the complainant; or

(b) counsel retained by the complainant; or

(c) where the complainant applies and is financially eligible for legal aid, counsel appointed by The Legal Aid Services Society of Manitoba.

Where complainant ineligible for legal aid.

24(8) Where the complainant applies but is financially ineligible for legal aid, the Commissioner shall review the complainant's finances, and where the Commissioner believes that the complainant cannot afford to retain counsel, the Commissioner may recommend that the minister appoint counsel to present the case in support of the complaint; and the minister may appoint counsel for that purpose.

Hearing in absence of respondent.

24(9) Where the respondent absconds or refuses or neglects without good and sufficient cause to attend the hearing, the board may hold the hearing in the respondent's absence.

Respondent not compellable.

24(10) The respondent is not compellable as a witness at any board hearing.

Public hearing.

24(11) Every board hearing shall be public, unless the maintenance of order or the proper administration of justice requires that all or part of a hearing be held in-camera; and the board may order that all or part of a hearing be held in-camera.

Justifying in-camera hearing.

24(12) Where any party applies to have all or part of a hearing held in-camera, the onus shall be on that party to satisfy the board that the maintenance of order or the proper administration of justice requires an in-camera hearing.

S.M. 1982-83-84, c. 21, s. 24.

Ban on publication.

25 Notwithstanding that all or part of a board hearing is public, no person shall cause to be published in any newspaper or other periodical publication, or broadcast on radio or television, the name of the respondent until the board has determined the merits of the complaint or the respondent admits having committed a disciplinary default.

S.M. 1982-83-84, c. 21, s. 25.

Admission of disciplinary default.

26 At the commencement or during the course of a board hearing, the respondent may admit having committed a disciplinary default; and if the respondent admits the default, the provisions of section 28 apply.

S.M. 1982-83-84, c. 21, s. 26.

Decision by board.

27(1) As soon as practicable after the conclusion of the hearing, the board shall decide whether the respondent has committed a disciplinary default and the board shall deliver its decision in writing

(a) to the parties; and

(b) where the respondent's Chief of Police and the Commissioner are not parties, to the respondent's Chief of Police and the Commissioner.

Standard of proof.

27(2) The board shall dismiss a complaint in respect of an alleged disciplinary default unless the board is satisfied beyond a reasonable doubt that the respondent has committed the disciplinary default.

Reasons for decision.

27(3) At the request of any party or the minister, the board shall provide to the parties and, where requested, to the minister, written reasons for

(a) the board's decision on the merits of a complaint; or

(b) a penalty ordered by the board under section 28.

S.M. 1982-83-84, c. 21, s. 27.

Ordering of penalty.

28(1) Where the respondent admits having committed or is found to have committed a disciplinary default, the board shall hear the submissions of the parties and details of the service record of the respondent; and the board shall order one or more of the penalties set out in section 30 for each disciplinary default which the respondent has committed.

Review of Commissioner's recommendation.

28(2) Prior to ordering a penalty against the respondent, the board shall

(a) in the case of a complaint referred to the board under subsection 16(5), examine the written statement forwarded by the Commissioner under subsection 16(6); and

(b) in the case of a complaint referred to the board under subsection 17(1), receive from the Commissioner and examine the written statement prepared by the Commissioner under subsection 17(3).

Maximum penalty.

28(3) For each disciplinary default which the respondent has committed, the board may order the penalty recommended by the Commissioner, or, in its discretion, a lesser penalty.

Compliance with order of board.

28(4) Where the board has ordered a penalty against the respondent, the respondent's Chief of Police shall impose the penalty; but where the respondent is a Chief of Police, the employer of the Chief of Police shall impose the penalty.

S.M. 1982-83-84, c. 21, s. 28.

Discipline Code.

29 A member commits a disciplinary default where he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

(a) Abuse of authority, including

(i) making an arrest without reasonable or probable grounds,

(ii) using unnecessary violence or excessive force,

(iii) using oppressive or abusive conduct or language,

(iv) being discourteous or uncivil,

(v) seeking improper pecuniary or personal advantage,

(vi) without authorization, serving or executing documents in a civil process, and

(vii) discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin.

(b) Making a false statement, or destroying, concealing, or altering any official document or record.

(c) Improperly disclosing any information acquired as a member of the police department.

(d) Failing to exercise discretion or restraint in the use and care of firearms.

(e) Damaging property or failing to report the damage.

(f) Being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property.

(g) Violating the privacy of any person within the meaning of The Privacy Act.

(h) Contravening this Act or any regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention.

(i) Assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

S.M. 1982-83-84, c. 21, s. 29.

Penalties.

30 A member who admits having committed or is found to have committed a disciplinary default is liable to one or more of the following penalties set out in diminishing order of seriousness:

(a) Dismissal.

(b) Permission to resign, and in default of resignation within 7 days, summary dismissal.

(c) Reduction in rank.

(d) Suspension without pay up to a maximum of 30 days.

(e) Forfeiture of pay up to a maximum of 10 days' pay.

(f) Forfeiture of leave or days off not to exceed 10 days.

(g) A written reprimand.

(h) A verbal reprimand.

(i) An admonition.

S.M. 1982-83-84, c. 21, s. 30.

Appeal.

31(1) An appeal from a decision of the board lies to the Court of Queen's Bench upon any question involving the jurisdiction of the board or upon any question of law alone.

Time for filing.

31(2) The appellant shall file a notice of appeal in writing within 30 days after the decision of the board, unless the court in the exercise of its discretion grants an extension of time for the appeal.

Parties to appeal.

31(3) An appeal may be launched by the complainant or the respondent; and the complainant and the respondent are parties to the appeal.

Other parties.

31(4) Upon application, the Commissioner or the board, or both, may be joined as parties to the appeal.

Counsel for appeal.

31(5) At the written request of the Commissioner, the minister may appoint counsel to represent the complainant on the appeal.

S.M. 1982-83-84, c. 21, s. 31.

Service record.

32(1) The Chief of Police of every police department in Manitoba shall keep a service record in respect of each member of the police department.

Contents of service record.

32(2) The Chief of Police shall record on the service record all matters relevant to the professional conduct of the member, including

(a) all disciplinary defaults under this Act and the penalties imposed therefor;

(b) all internal disciplinary offences and the penalties imposed therefor; and

(c) all official commendations given to the member;

but not including any personal matters which are not relevant to the professional conduct of the member.

Commencement of service record.

32(3) For purposes of this Act, each member shall be deemed to have a blank service record as of the coming into force of this Act; and each member's service record shall relate only to the professional conduct of the member subsequent to the coming into force of this Act.

No record of admonition.

32(4) Notwithstanding anything in this Act, where no penalty other than an admonition is imposed against a member for a disciplinary default under this Act, the member's Chief of Police shall not record the disciplinary default or the admonition on the member's service record.

Expunging service record.

32(5) Upon application by a member whose service record contains an entry for a disciplinary default under this Act, the member's Chief of Police shall expunge the entry

(a) where a reprimand was imposed, after 2 years have expired from the date of disciplining;

(b) where a forfeiture of pay, leave, or days off was imposed, after 3 years have expired from the date of disciplining; or

(c) where reduction in rank or suspension without pay was imposed, after 5 years have expired from the date of disciplining;

but only if in each case the member has committed no further disciplinary defaults under this Act since the date of disciplining.

Right to inspect service record.

32(6) Every member has the right to inspect his service record.

S.M. 1982-83-84, c. 21, s. 32.

Organizational and administrative practices.

33 Where the board identifies any organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the board may recommend appropriate changes to the Chief of Police and to the municipal authority which governs the department.

S.M. 1982-83-84, c. 21, s. 33.

Effect of criminal charge.

34 Where a member has been charged with a criminal offence, there shall be no investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

S.M. 1982-83-84, c. 21, s. 34.

Disclosure of possible criminal offence.

35(1) Where a matter before the Commissioner or the board discloses evidence that a member may have committed a criminal offence, the Commissioner or board shall report the possible criminal offence to the Attorney-General and shall forward all relevant material, except privileged material, to the Attorney-General for the possible laying of charges.

Effect of decision to lay charges.

35(2) If the Attorney-General charges the member with a criminal offence, there shall be no further investigation, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.

Objection conclusively deemed.

35(3) Where a member who testifies before the board is subsequently charged with a criminal offence, the member shall be conclusively deemed to have objected to answering every question put to him before the board on the ground that his statement or his answer may tend to criminate him or to establish his liability to a legal proceeding at the instance of the Crown or of any person.

S.M. 1982-83-84, c. 21, s. 35.

Prosecution for offences.

36 No investigation, hearing, or disciplinary action under this Act precludes the subsequent prosecution of any member for an offence.

S.M. 1982-83-84, c. 21, s. 36.

Effect of complaint on internal discipline.

37(1) Where a complaint has been filed under this Act, the respondent is not subject to any internal police discipline in respect of the conduct which constitutes the subject matter of the complaint.

Suspension of internal disciplinary proceedings.

37(2) Where internal police disciplinary proceedings have been commenced against a member in respect of conduct which constitutes the subject matter of a complaint under this Act, the internal disciplinary proceedings shall terminate upon the filing of the complaint and the matter shall be resolved solely in accordance with this Act.

Effect of completion of internal proceedings.

37(3) No resolution or termination of internal police disciplinary proceedings against a member precludes the subsequent filing of a complaint under this Act in respect of the conduct which constitutes the subject matter of the internal disciplinary proceedings.

Internal disciplinary proceedings unaffected.

37(4) Notwithstanding anything in this section

(a) where no complaint under this Act has been filed within the time period set out in subsection 6(3); or

(b) where the Commissioner takes no further action on a complaint in accordance with subsection 9(2) or clause 13(1)(b);

this Act does not affect any internal police disciplinary proceedings, including appeals therefrom, brought against a member in respect of the member's conduct toward any person.

S.M. 1982-83-84, c. 21, s. 37.

Where members of public not involved.

38 This Act does not apply to matters of internal police discipline which do not involve members of the public.

S.M. 1982-83-84, c. 21, s. 38.

Civil remedies.

39 This Act does not affect any civil remedies available to any person.

S.M. 1982-83-84, c. 21, s. 39.

Act to prevail over collective agreement.

40 Where there is conflict between this Act or the regulations hereunder and any collective agreement in force in the province, this Act prevails.

S.M. 1982-83-84, c. 21, s. 40.

Act to prevail over other Acts.

41(1) Where there is conflict between this Act and any other Act of the Legislature, this Act prevails.

Jurisdiction of police commissions.

41(2) Without restricting the generality of subsection (1), where the conduct of a member of a municipal police department is the subject matter of a complaint under this Act, there shall be no inquiry, investigation or hearing by any local police commission or the Manitoba Police Commission in respect of the same conduct except as provided or authorized by this Act.

Meaning of "local police commission".

41(3) For the purposes of this section, "local police commission" means

(a) any police commission established pursuant to the provisions of the charter of any city; or

(b) any police commission established under any other Act of the Legislature; or

(c) any municipal council or any municipal committee, however composed, which is charged with or responsible for the maintenance of a municipal police department.

S.M. 1982-83-84, c. 21, s. 41.

Failure to comply.

42 Every person who, without lawful excuse,

(a) fails to comply with an order or decision of the Commissioner or the board; or

(b) contravenes section 25;

is guilty of an offence and is liable on summary conviction to a fine of not more than $2,000.00 and in default thereof to imprisonment for a term not exceeding 3 months or to both such fine and such imprisonment.

S.M. 1982-83-84, c. 21, s. 42.

Witness fees.

43 The fees payable to witnesses at board hearings are the same as the fees payable to witnesses in the Court of Queen's Bench.

S.M. 1982-83-84, c. 21, s. 43.

Regulations.

44 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations and orders as are ancillary thereto and are not inconsistent therewith; and every regulation or order made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make such regulations and orders, not inconsistent with any other provision of this Act

(a) prescribing the forms in which complaints, notices of alleged disciplinary defaults, and appeals may be made;

(b) prescribing rules of procedure to be followed by the board in conducting any hearing held before it;

(c) respecting such other matters as may be necessary to enable the Commissioner and board to carry out their powers and duties under this Act.

S.M. 1982-83-84, c. 21, s. 44.

Annual report.

45 The Commissioner shall submit an annual report concerning the performance of his duties and functions to the minister and to each municipality in the province which has established a police department; and the minister shall table the report in the Legislature.

S.M. 1982-83-84, c. 21, s. 45.

Transitional provision.

46 Where, before the coming into force of this Act, any complaint was made against a member, that complaint may be disposed of in accordance with the law in force at the time the complaint was made.

S.M. 1982-83-84, c. 21, s. 46.

Reference in Continuing Consolidation.

47 This Act may be referred to as chapter L75 in the Continuing Consolidation of the Statutes of Manitoba.

S.M. 1982-83-84, c. 21, s. 47.

Commencement of Act.

48 This Act comes into force on a day fixed by proclamation.

S.M. 1982-83-84, c. 21, s. 48.

NOTE: This Act was proclaimed in force as of the 1st day of February, 1985; Manitoba Gazette No. 4, page 120, dated January 26, 1985.

Printed by the Queen's Printer for the Province of Manitoba

MANITOBA REGULATION 8/85

BEING A REGULATION UNDER THE LAW ENFORCEMENT REVIEW ACT

(Filed January 14, 1985)

1 In this regulation, "Act" means The Law Enforcement Review Act.

2(1) In processing two or more complaints respecting the same incident as it affects the same person, the Commissioner shall deem one person to be the complainant.

2(2) Where an affected person and a third person each submit a complaint respecting the same incident in respect of the affected person, the Commissioner shall deem the affected person to be the complainant irrespective of the sequence in time in which the complaints are received.

3 The complainant and the respondent may, at any stage of the proceedings under the Act, agree to resolve the complaint informally and the Commissioner may thereafter suspend any further action and resolve the complaint in accordance with the agreement.

4 Where conduct leading to a complaint is to be investigated by the internal investigation unit of the respondent's department for the possible laying of criminal charges against the respondent, the Chief of Police of the department shall inform the Commissioner of this intention.

5 Witnesses attending at formal hearings of the Commissioner to give testimony under oath are entitled to receive the same fees as are payable to witnesses in the Court of Queen's Bench.

6 The notice of an alleged disciplinary default required to be served on the respondent under subsection 17(2) of the Act shall be in the form set out in Appendix 1 to this regulation.

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APPENDIX 1

THE LAW ENFORCEMENT REVIEW ACT

NOTICE OF ALLEGED DISCIPLINARY DEFAULT AND REFERRAL TO THE LAW ENFORCEMENT REVIEW BOARD

Date of Complaint:

File No.:

Complainant:

Respondent Officer:
(Include Rank, No. and Police Department)

TAKE NOTICE that the Law Enforcement Review Commissioner hereby refers the above matter to the Law Enforcement Review Board for a hearing to determine the merits of the complaint which alleges the commission of certain disciplinary defaults, as defined under Section 29 of The Law Enforcement Review Act, by the above named respondent officer, namely that he/she did:

1.

2.

3.

DATED at this day of , 19

L.E.R.A. Commissioner